U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30556460

Date: JUL. 05, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a voice actor, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not satisfy at least three of the initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director determined the Petitioner did not fulfill any of the four claimed categories of evidence. On appeal, the Petitioner maintains his qualification for the four previously claimed criteria. For the reasons discussed below, the Petitioner did not establish he meets at least three categories of evidence.

A. Evidentiary Criteria

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.[1] The published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work.[2] USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.[3]

The Petitioner maintains that he satisfies this criterion based upon an article dated [redacted] 2016 posted on tvefamosos.uol.com.br. The article, however, does not reflect published material about the

[1] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.
[2] *Id.*
[3] *Id.*

Petitioner relating to his work. Instead, the article is about the angry reaction of Brazilian fans to a change in the dubbers for the sixth season of the HBO series [redacted] The article mentions the Petitioner was the dubbing director for the former studio, [redacted] and quotes him as stating that he "gets complaints from the audience about the dubbing." The person and the person's work need not be the only subject of the material; published material that covers a broader topic but includes a substantial discussion of the person's work in the field and mentions the person in connection to the work may be considered material about the person relating to the person's work.[4] *See also, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Here, the article reports on the show with a brief mention of the Petitioner and therefore, does not demonstrate published material about him.

The Petitioner also did not demonstrate the article was published in a professional or major trade publication or other major medium. In evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).[5] Although the Petitioner submitted online traffic and rankings from SimilarWeb for uol.com.br, he did not provide documentation to establish the major media status of the website that published the article, tvefamosos.uol.com.br.

In addition, the Petitioner submitted summaries of the films [redacted] and the puppet theater production [redacted] that accompanied the announcement of their showing in the publications oparana.com.br, vivoplay.com.br, cbtij.org.br, and diariogaucho.clierbs.com.br. While the articles identify the Petitioner as a voice actor on these projects, they are not articles about him but rather summaries of the productions he dubbed. Again, articles that are not about a petitioner do not fulfill this regulatory criterion. In addition, these articles do not include the required authors of the material.[6]

Finally, the Petitioner submitted a radiofobia.com.br screenshot of a video posted by [redacted] from "Almir Marques Interviews." The screenshot indicates that the video reflected an interview of the Petitioner broadcasted on 93 FM de Rio do Sul, Santa Catarina. However, the Petitioner did not provide a transcription of the video demonstrating published material about him relating to his work. Moreover, the Petitioner did not establish that the show "Almir Marques Interviews" represents a major medium.

For the reasons discussed above, the Petitioner did not show he meets every element of this criterion.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales.* 8 C.F.R. § 204.5(h)(3)(x).

USCIS determines whether the person has enjoyed commercial successes in the performing arts.[7] The Petitioner claims eligibility for this criterion based on his having dubbed characters in the Portuguese Brazilian-language versions of productions, including: [redacted] (2003) [redacted]

[4] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[5] *Id.*
[6] *Id.*
[7] *Id.*

[redacted](2011-2016) (TV series [redacted] [redacted](2003-2009)(animated TV series [redacted] 2003-2009); [redacted](2011-2016) (TV series [redacted] [redacted](2000-2003) (Animated TV series [redacted] [redacted](2013-2021) (TV series [redacted] [redacted](2001-2012) (animated TV series [redacted] and [redacted](2005-2021) (TV series [redacted]. The Petitioner submitted information from IMDb for some of these productions showing their gross worldwide revenue.[8]

This criterion focuses on volume of sales and box office receipts as a measure of the person's commercial success in the performing arts.[9] Therefore, the mere fact that a person has recorded and released musical compilations or performed in theatrical, motion picture, or television productions would be insufficient, in and of itself, to meet this criterion.[10] The evidence must show that the volume of sales and box office receipts reflect the person's commercial success relative to others involved in similar pursuits in the performing arts.[11]

While the Petitioner has performed as a voice actor for TV series and films, he has not shown that the success of those motion picture and television productions was attributable to his specific work as a voice actor. Furthermore, he has not demonstrated that his television or film voice acting performances have attracted substantial audiences or that his dubbing work generated significant sales. As the Director stated, in order to meet this criterion, the evidence must show that the volume of sales and box office receipts reflect a petitioner's commercial successes relative to others involved in similar pursuits in the performing arts. Here, the record does not include evidence identifying the Petitioner as having commercial successes relative to other performing artists. Nor is the evidence sufficient to demonstrate that the commercial successes of the aforementioned television and film productions in which he performed were mainly because of the Petitioner's work. Without additional evidence, the Petitioner did not establish he has achieved commercial successes.

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[8] We note that because there are no assurances about the reliability of the content from this open, user-edited internet site, we will not assign weight to information from imdb.com. *Cf. Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008) (finding that another open, user-edited internet site, *Wikipedia*, lacks reliability of the content). *See* also imdb.com:

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Without corroborating evidence, such as industry or media reports or other credible, independent sources to support this information, we cannot make a determination regarding the productions' relative successes.

[9] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

[10] *Id.*

[11] *Id.*

III. CONCLUSION

The Petitioner did not establish he satisfies the two categories of evidence discussed above. Although the Petitioner also argues eligibility for two additional criteria, pertaining to judging under 8 C.F.R. § 204.5(h)(3)(iv) and display under 8 C.F.R. § 204.5(h)(3)(vii), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[12]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach).

Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field. For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[12] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).